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1948.

File No. O. Saranjams/48

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Legal **DEPARTMENT**

A **BRANCH**

K.S.R. 8/G

Subject:—

Saranjams.

Opinions under the Saranjam

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File No. O. Saranjams/48.

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2-A

C O N T E N T S.

Legal Department File No. O.Saranjams/48

Sr. No.	R.I. /O.No.	Subject.	Pages.
		Opinions under the Saranjam State Act.	
1	13695 15/17-11-47 244 9-1-48	Question regarding payment of Saranjam allowance to the eldest son of the deceased Saranjamdar.. Question as to which rule should be invoked if a grant is to be made to the saranjamdar's uncle on account of "disturbed" vision. Rules 5 & 7 of the Saranjam Rules.	1-4
2	631 19-1-48	Re: Grant of Saranjam. Question of legitimacy B'bay Revenue jurisdiction Act, 1876, sec.4(a) Rule 2 of saranjam Rules.	5-6
3	3507 12-4-48 (U.R.toAdv.Genl) 4906 22-5-48	Re: Do.	7-16
4	5270 7-6-48	Re: Liability to satisfy decree for debts of father .In the matter of Hebli Saranjam.	17-18
5	4439 7-5-48	Re: Potnis Saranjam which consists of land and cash in Poona, Satara, Ahmednagar and Sholapur Districts. Portion of --	19-28
6	9701 18-10-48	Re: Conversion of saranjam lands into that of Rayatwari tenure.	29-30
7	9935 23-10-48	Rules 5 & 6 of Saranjam Rules, Re: Shendurni Saranjam claims to the --	31-32
8	11999 17-12-48	Re: M.G.R. P. & S.D. in respect of Shendurni Saranjam scrutiny.of	33-34
9	11875 15-12-48	Re: claim of Sardar of Wai to the revenues of Erandol Pargana (Treaty of 1820). (Pl. also see R.L.A.'s No. 3454/ 30-3-49) (O. Saranjam/49).	35-36

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PSM. 1-6
5C

KSR
5/6

Legal Department.
R.I.No. 13695
dt. 15/17-11-1947.

Submitted.

2. A Saranjam allowance of Rs. 1615 entered at serial No. 33 in the Saranjam List was held by Mr. Appasaheb Krishnarao Bhosale of Kothule, taluka Shrigonda in the Nasik and West Khandesh Districts. The allowance is payable from the Malegaon sub-treasury. Appasaheb died on 27-12-1945 and his eldest son Mr. Vijaysing Appasaheb Bhosale has requested that his name be entered in the peta Khatawahi in place of his deceased father. It is now proposed to resume and regrant the saranjam amal held by the deceased Appasaheb to his eldest son Vijaysing with effect from 27-12-1945. The Commr. C.D. recommends also the grant of a maintenance allowance of Rs. 240/- p.a. under rule 7 to Bhausaheb Krishnarao Bhosale, the brother of the deceased saranjamdar and further states that since the responsibility of providing for the maintenance of his mother, younger brothers and sisters is on the new saranjamdar it is not necessary for Government to pass orders at present. P. & S.D. considers that rule 7 will not apply in the case of grant of allowance to Bhausaheb but under rule 5 it is open to Government to impose a special charge on the estate. The Chief Secy. agrees with the Commr. that there is no case for maintenance to his nearer relatives but requests the R.L.A. to advise as to which rule should be invoked if a grant is to be made to the saranjamdar's uncle on account of "disturb" vision.

Office of the R.L.A.

Rule 7 of the Saranjam Rules may be invoked for the purpose (see R.L.A.'s opinion No. 13534, dated 31-12-1947).

Id/- P.M.L.
8-1

Remembrancer of Legal Affairs.

U.R. to P. & S.D., No. 244, dated the 9th January 1948.

PSM. 28-5
4C

Grant of Saranjam. Question of Legitimacy.

Bombay Revenue Jurisdiction Act, 1876.

Under rule 2 of the Saranjam Rules, although a Saranjam is ordinarily continuable to the eldest male representative in the order of primogeniture of the senior branch of the family descended from the first British grantee or any of his brothers who were undivided in interest, Government reserve to themselves the rights for sufficient reasons to direct the continuance of the Saranjam to any other member of the said family. In 'Sheikh Sultan Sani Vs. Ajmadin' 17 Bom. 431 it was held that in the matter of choice of the next heir to the Saranjam, Government is the exclusive authority and it is not within the competence of any legal tribunal to review the decision of Government. Under section 4(a) of the Bombay Revenue Jurisdiction Act, 1876 no Civil Court has jurisdiction as to any claim against the Crown relating to lands granted or held as Saranjam or on any other political tenure. It is, therefore, clear that as the power to choose, the next heir to the Saranjam vests in Government and as the choice made by Government could not be subject to the jurisdiction of any Court, there would arise no question in the present case of driving any party to a court of law, when no party can have any cause of action.

2. After the death in 1929 of Mehrban Janrao Ramkrishnarao, the holder of the Saranjam Inam at Bellanki, taluka Athani, District Belgaum, an heirship enquiry was held and, since his widow Tarabai, who was alleged to have given birth to a posthumous son, Shahajirao, did not care to produce any authentic proof of the legitimacy of the child, and as there were serious doubts

about the lalleged birth of a legitimate son to Tarabai, Government regranted the Saranjam in 1932 to Shamrao Bhaurao Gaikwad. Even thereafter Government expressed an intention to revise that order of the regrant of the Saranjam provided Tarabai produced the decree of a competent Civil Court to prove that Shahajirao was the legal heir of the deceased Janrao Ramkrishnarao Still no such decree was obtained by Tarabai. The Letters of Administration produced by her could not be accepted as proper proof of the legitimacy of Shahajirao and the view expressed by the R.L.A. in his opinion No. 6416, dated the 15th July 1940 is quite correct and needs no reconsideration.

3. Shamrao to whom the Saranjam was regranted in 1932 died in 1946. The right to succession would, therefore, ordinarily vest in the family of Shamrao under rule 2 of the Saranjam Rules. Although it would be within the power of Government to choose Shahajirao. Tarabai was repeatedly asked to produce the decree of a competent Civil Court to prove the legitimacy of Shahajirao, and still she took no steps for the purpose. This circumstance coupled with the suspicious circumstances in which Shahajirao was born would warrant no presumption of Shahajirao's legitimacy. The view taken by P. & S.D. is correct.

Id/- P.M.L.
17-1

Remembrancer of Legal Affairs.

U.R. to R.D.,No. 631 dated the 19th January 1948.

PSM. 28-5
4C

Office of the H.L.A.

Statement of the Case.

It appears that Mehrban Janrao Ramkrishnarao the holder of the Saranjam Inam at Bellanki, Taluka Athani, District Belgaum, died on the 11th December 1929 leaving behind him his widow Tarabai and two daughters. The Saranjam estate was resumed and the question of heirship enquiry proceeded with for the purpose of determining to whom the Saranjam should be regranted. In the enquiry it was alleged by the widow Tarabai that a posthumous son was born to her from deceased Saranjamdar in Goa Territory in September 1930. She was asked to produce the child's birth certificate and was given time. She did not produce this certificate in time. Urgent notices were issued to her but she was reported to have gone to Goa and copies of notices were fixed to her lodging. Inspite of these notices she did not turn up nor did she care to produce any certificate. The Mamlatdar reported that she was intentionally avoiding the service of notice. It was considered that had the birth of a son to Tarabai from Janrao been real, there should have been no difficulty whatever in producing proper proof of the alleged birth within a reasonable time. But as no authentic proof of the birth of a son in the Goa territory was produced, nor were any cogent reasons adduced for its failure, the Collector considered that there were serious doubts about the alleged birth of a legitimate son to Tarabai from Janrao and recommended that Government should presume that the child in question was not a child of the deceased Saranjamdar. This recommendation was accepted by Government and by G.R.No. 514 dated the 13th January 1932, Government

regranted the Saranjam to Shamrao Bhaurao Gaikawad. In August 1935, i.e. more than three years after the Saranjam was regranted to Shamrao, Tarabai approached Government stating that her posthumous son Shahajirao, who was born at the village of Garapur in Goa on 4th September 1930, was the legal heir of the deceased Janrao Ramkrishnarao Gaikwad and produced a copy of a translation of the birth certificate issued by the authorities in Goa and requested that Shahajirao should be recognised as Saranjamdar of Bellanki. Government informed her in 1936 that her request could not be considered unless she produced within a period of one year a certificate from a competent Civil Court about the legitimate birth of Shahajirao from Janrao, the late Saranjamdar of Bellanki. In February 1940, Messrs. Payne and Co., Solicitors, wrote to Government stating that Shahajirao, by his next friend and mother, applied in the Court of the District Judge of Belgaum for Letters of Administration to the estate of his deceased father and that an Order had been obtained that the petitioner Shahajirao Janrao is the son and legal heir of the deceased, and on the strength of that Order requested Government to grant the Saranjam to Shahajirao. The R.L.A. who was consulted, opined that the minor Shahajirao would not be entitled by the Letters of Administration obtained by him to administer the Bellanki Saranjam estate, much less to claim it as the heir of the deceased Mehrban Janrao and consequently unless he produces a decree of a competent Civil Court in proof of his being a legitimate son of the deceased Mehrban Janrao as directed by Government in 1936 his claim to the Bellanki Saranjam should not be considered. (See R.L.A.'s opinion No. 5416 dated 15th July 1940). Government accepted the opinion of the R.L.A. and informed Messrs. Payne and Co., accordingly. Thereafter nothing was done by Tarabai. Shamrao to whom the Bellanki Saranjam was regranted in 1932 died on 22-12-1946 leaving behind him

his only son Vishwasrao and consequently the question of regranting the Saranjam has arisen. Tarabai has again seized this opportunity and is pressing the claim of her son Shahajirao to succeed to the Saranjam on the ground that Shahajirao being her legitimate child should be recognised as Saranjamdar. Since Tarabai did not produce any decree of the Civil Court in poor of the legitimacy of Shahajirao, the Political and Services Department was not inclined to grant her request. Secretary, R.D., was, however, of the opinion that ordinarily the party who disputes the legitimacy of a child should be driven to the Court and consequently Shahajirao's claim should be recognised by Government unless his legitimacy is disproved by the opposing party. He, therefore, leaned in favour of minor Shahajirao and requested the R.L.A. to reconsider the opinion given by him in 1940.

The R.L.A. re-examined the case and held that R.L.A.'s previous opinion No. 6416 dated 15th July 1940 was quite correct and did not need any reconsideration (vide R.L.A.'s opinion No. 631 dated 19-1-1948).

Government, however, desides that as the matter is important the Advocate General should be consulted. He is accordingly requested to favour Government with his opinion.

(R.L.A. has signed F.C.)

Remembrancer of Legal Affairs.

U. R. to Advocate General, Bombay No. 3597, dated the 12th April 1948.

PSM. 29/5 4C

No. 22 of 1948.

Advocate General's Chambers,
High Court,
Bombay, 18th May 1948.

U. O.R. to Advocate General of Bombay,
No. 3507 dated the 12th April 1948.

OPINION.

As decided in Shaikh Sultan Vs. Ajmadin, 17 Bombay, p. 431, in the matter of the choice of the next successor to H Saranjam, Government has the sole and exclusive authority, not subject to the control or direction of any other authority or tribunal. (See also sec. 4(a), Bombay Revenue Jurisdiction Act, 1876). Accordingly, as pointed out by the H.L.A. at page 31 of the File, in his opinion dated the 19th of January 1948, there is no question of "driving" a party to a court of law when there could be no direct cause of action in regard to the appointment to the Saranjam . If, however, no kind of suit could be filed at all, then the direction to Tarabai to produce the decree of a competent civil court would be illusory. It appears to me, however, that Government's directions issued in this behalf as far back as 1936, amounted to casting a doubt on the legitimacy of Shahajirao, for which doubt, apparently there was some reasonable ground, The Collector considered that there were serious doubts about the legitimacy, and recommended the Government to presume that the child was not legitimate.

In these circumstances, it was open to Tarabai and/or her son to file a suit even against Government, or at any rate against the Saranjamdar Shamrao Gaekwad, for a declaration of legitimacy, they ~~i.e.~~ Govt. and Shamrao being persons "interested to deny" such

legitimacy. The fact that over all this period of years, she nor her son have chosen to file such a suit, has considerable significance. A vital decision was really arrived at when Shamrao was granted the Saranjam. That decision, followed by the correspondence in 1936, casts a burden upon Tarabai and her ~~xxx~~ son to establish ~~the~~ legitimacy. In the ordinary course the Saranjam would now go to the son of Shamrao, and Tarabai would have to satisfy the Government, as required by the Government, as to her sons legitimacy, for Government to reverse the ordinary course of succession.

As pointed out in the File at page 29 there may be ordinarily a presumption of legitimacy, but such presumption would normally have operated at the time when the succession to the Saranjam was diverted from Janrao's line. At that time there was material apparently upon which legitimacy could well be doubted, and the succession having been then diverted, Government is well within its rights in refusing to redivert the succession to Janrao's family without the proof that has been required. It is for Government to impose such conditions of satisfaction as it likes, being the absolute authority; and as I have said, it has never been impossible for Tarabai and her son to take the necessary proceedings. I agree with the opinion of the H.L.A., No.631, dated the 19th of January 1948.

Sd/- C. K. Daphtary.
Advocate General.

Office of the R.L.A.

A copy of the opinion of the Advocate General, BOmbay No. 22 of 1948, dated the 18th May 1948, together with the statement of the case prepared for him is forwarded herewith.

The Advocate General agrees with the opinion of the R.L.A., No. 631, dated the 19th January 1948.

Id/- P.M.L.
21-5

Remembrancer of Legal Affairs.

U. R. to P. & S.D.,No. 4906, dated the 22nd May 1948.

PSM. 29-5
4C

Liability to satisfy decree for debts of father.

In the matter of Hebli Saranjam.

The decree in C.S.No. 66 of 1937 does not impose any personal liability on Mr. S.L.Heblikar and limits his liability to his interest in the joint family property. The property which has been given to him for maintenance forms part of the Saranjam property and cannot be considered as part of the joint family property wherein interest by birth is created under Hindu Law. Consequently that property of his cannot be proceeded against for the satisfaction of the decree.

Id/- P.M.L.
5-6

Remembrancer of Legal Affairs.

.R. to P.& S.D.,No. 5370, dated the 7th June 1948.

PSM. 29-5
4C

Office of the R.L.A.

The Potnis Saranjam consists of considerable land and cash in Poona, Satara, Ahmednagar and Sholapur Districts and is shown at No. 21 of the saranjam list. It was granted hereditarily to the lineal male descendants in male descent of Bhimrao, the British grantee and his brothers Yeshwantrao and Balwantrao. The petitioners are the great grandsons of Yeshwantrao, the brother of the original British grantee. In 1887 some members of the Potnis family represented to the Commissioner that they had each of them a share in the saranjam and pension and as the Saranjamdar had refused to pay them their dues they prayed that either their shares should be recognised by Government and separately entered in the records or that certificates under the Pensions Act should be issued to enable them to establish their claim in the Civil Court. The Commissioner complied with the latter request and directed the collectors to issue certificates accordingly. In the meanwhile Atmaram Keshav instituted a civil suit (No. 458 of 1881) against Madhavrao Manohar, the eldest representative of the family for the partition of the saranjam and other family property. All the shares including the father of the petitioners (Raghunathrao Bajirao) were made parties to the suit. The suit it was decreed in favour of the plaintiffs and ultimately it went in appeal and the High Court held in the decision as reported in Madhavrao Manohar Vs. Atmaram Keshav 15 Bom. at p. 524 as follows.:-

> "In the present case the members of the Points Potnis family have throughout the present century treated the saranjams as partible, and have dealt with them as such in effecting partitions of the entire family estate, which consisted both of inams and saranjams. This is shown by the division in 1833 between the three brothers Bhivrav (Bapu Saheb), Yeshvantrao (Dadu Saheb) and Balvantrao (Balsaheb) as recited in Exhibit 93, and not

disputed by the defendant No. 1; and by the division in 1839-40 by Bhivrav, of the inams and saranjams which fell to his share, between his sons Mahohar, Ramchandra and Vithal; and, lastly, by that in 1870 (Exhibit 93) between all the members of the several family, except defendant No. 1, Madhavrao, who apparently did not approve of the partition as made by it; and is sufficient, we think, to justify the conclusion that the saranjams were either originally partible or had become so by family usage."

After the decision of the High Court Raghunathrao, father of the petitioners applied to Government for the recognition in the Government records his 1/3rd share in the saranjam and to pay him his share amounts separately. But Government declined to do so and informed him that it was open to him to recover the amount of his share by a civil suit. The reasons given by Government were that Government were not made a party to the litigation and therefore they were not bound to make any changes in the Government records, that the decree did not contain any direction as to the manner in which the cash allowances forming part of the saranjams, were to be paid to the several persons determined by the High Court to be entitled to the share therein and that there was nothing to prevent the Collector from paying the allowances to the holder of the saranjam. (Cf. G.R.P.D.,No. 1896, dated 31-3-1894).

Meanwhile, three of the cadets of the family successfully sued Sardar Bhivrao Madhavrao for recovery of the amounts of their shares for the years 1888-89 to 1890-91 and obtained orders from the Civil Court for attachment of certain portion of the Saranjam allowances standing in the Sardar's name. Consequently, the question was raised whether Saranjam allowance was protected from attachment or whether the Collector could oppose any such application made by the decree-holders. Both the R.L.A. and Advocate General opined

that it was not 'pension' within the meaning of section 11 of the Pensions Act.

In view of this state of affairs and with a view to avert partition of Sardar Bhivrao's Saranjam property, in their despatch to the Secretary of State for India in Council No. 30 dated 11-11-1895, the Government of Bombay proposed that only remedial course was to resume the Potnis Saranjam and to regrant it to the head of the family, Sardar Bhivrao Madhavrao. In his Despatch No. 3 (Political), dated the 13th February 1896 His Majesty's Principal Secretary of State for India, states as follows:-

"....

4. I agree generally with the view of your Excellency's Government that saranjams are by the nature of their tenure impartible estates of which the benefits are intended for the support of the Saranjamdar for the time being and of such, if any, of the members of his family as may be expressly designated by Government. I am also of opinion that Government is justified in taking whatever steps may be necessary to prevent the imporper subdivision of the revenues of such political estates. The power of Government to determine how saranjams are to be held and inherited has been affirmed by judicial decisions, and it has been laid down that 'if the Civil Courts had juriadiction over claims relating to Saranjams they would be bound to determine such claims according to the rules laid down by Government.' I suggest, for the consideration of your Excellency's Government that rules of the kind indicated should be promulgated, which shall prevent any possible recurrence of the present antagonism between such family usage as would be in ordinary cases recognised by the Courts and the policy of Government in the matter of Saranjams.

5. While agreeing with your Excellency's Government in regard to the powers of Government in this matter, and in regard to the general policy to be adopted, I am not prepared in dealing with the present case to approve altogether the course you propose.

6. The Saranjam having for so long a period been treated by the family as partible, and having so recently been dealt with as a partible asset in the division of the family property, it appears to me that the intervention of the Executive to deprive the shareers other than the saranjamdar of the fruits

of successful litigation could not avoid the appearance of an arbitrary and capricious exercise of authority. In one case disposed of by a Resolution of your Government, No. 4901, Political Department, dated 8th August 1893, your predecessor, while declaring that the Scheduled Saranjam was an intact estate vesting in the recognised Saranjamdar, yet decided that during the continuance of his life tenure the interests of certain parties whose claims had been recognised as sharers should be respected.

7. Under the peculiar circumstances of the present case, the following is the course which, I think, should be adopted. Upon the death of the present Saranjamdar the whole Saranjam can be continued to the next recognized successor as an intact impartible estate, but until that event occurs, I consider that the shares declared by the Courts of Law to belong to the several shareholders recognised with the proviso that if any one of these shareholders predeceases the present saranjamdar, his share should revert to the saranjam, subject only to such provision as the Saranjamdar as head of the family may please to make, or your Excellency in Council may, if due cause be shown, think fit to assign. Should, however, the death of the Saranjamdar occur at an early date, and the benefits enjoyed by the other shareholders from the recent litigation, thereby prematurely lapse, your Excellency's Government would, no doubt, give special consideation to the interests of the surviving shareholders, and in the exercise of your power of assignment make such provision for them out of the Saranjam during the rest of their lives only as their circumstances might require.

8. In the meanwhile, the rules to which I have already referred might be promulgated, and your officers reminded that certificates under the provisions of Act XXIII of 1871 should only be granted in very exceptional cases of doubtful title and with the express sanction of Government."

Accordingly in exercise of powers referred to in rule 10 of Schedule B of Act XI of 1852 and of the second sub-clause of clause 3 of section 2 of Bom. Act VII of 1863, His Excellency the Governor-General in Council issued the Saranjam Rules for the purpose of determining the terms on which the continuance of jahgirs and saranjams shall be subject. Rule 6 of the Saranjam Rules in unqualified terms provides that no Saranjam can be capable of sub-division. Even as long ago as in 1903 Batty J. after discussing the impartible nature of the Saranjam estate in Ramkrishnarao Vs. Manrao 5 of Bom. L.R

983 at p. 987 observed:

> "It is evident that unless Government can thus maintain some control over the devolution of estates granted for the preservation and due maintenance of a specified line, their intentions might be frustrated by morcellment which would fritter away the estate amount an unlimited number of co-sharers. The estate must necessarily be governed by the terms subject to which it was granted and if the plaintiffs are not entitled under those terms, they cannot claim partition as of right in the civil Courts altough they might able to obtain from the Executive the benefit of requisitions contemplated in the despatch above quoted for adequate provision to be made, as from time to time deemed desirable, for their maintenance. It does not appear that persons who are grantees subject to specified conditions, can by any length of family custom or usage, establish with binding force which a Court could recognise, any variation of tenure inconsistent with the conditions on which it was granted or is allowed by the grantor, the Executive Government, to be continued. In the case of Narayan Jagannath Dikshit V s. Vasudev Vishnu Dikshit (30 it was held Government had in its final order left the matter then in dispute to be decided by the Civil Courts, and therefore in the form in which that particular case came before the Court, the claim was dealt with as one in which Government had decided that the point in dispute was not one for Government to adjudicate upon. In the case of Madhavrao Vs. Atmaram Keshav (31) the conclusion arrived at appears to have been that the Saranjam there in question was either originally partible or had become so by family usage and the assumption appears therefore to have been that in the case of that particular Saranjam, the executive had acquiesced in a rule as to the enjoyment of the grant which allowed the estate either ~~originally partible or had become so by family usage and the assumption appears therefore to have been that in the case of that particular Saranjam, the executive had acquiesced in a rule as to the~~ to descend in separate lines or to be opportioned among several persons practically recognised as grantees. It would be difficulty in the present instance to make a similar assumption seeing that the plaintiffs cause of action is alleged to have arisen from an order of the Executive refusing to recognise the particular claim set up by him.

The same view was expressed by the Bombay High Court as far back as in 1882 even before the Saranjam Rules were framed by the Government in Ramchandra Vs. Venkatrao 6 Bom. 598. In this decision it was held that it was for the Government to determine how Saranjams are to be held and inherited, and in cases where the Civil Courts have jurisdiction over claims relating to Saranjams in consequence of the non-applicability

of the Pensions Act XXIII of 1871 or otherwise they would be bound to determine such claims according to the rules, general or special, laid down by the British Government and in the absence of the rules the Courts would be guided by the law applicable to impartible property. It is true that in Ramkrishnarao Vs. Nanrao 5 Bom. L.R.983 it was stated that in the case of Madhavrao Manohar Vs. Atmaram Keshave 15 Bom. 519 the Saranjam in question was originally partible or had become so by family usage and it was assumed that in the case of that particular Saranjam the Government had acquiesced in the rule as to the enjoyment of the grant which allowed the estate either to descend in separate lines or to be apportioned among several persons practically recognised as grantees. But, this assumption was not correct because in pursuance of the directions contained in para. 7 of the Despatch from the Secretary of State for India and in exercise of the powers conferred by rule 5 of the Saranjam Rules the Saranjam was resumed by Government and regranted free of all encumbrances to Sardar Janardhan Bhivrao Potnis with effect from 10-6-1911. After Sardar Janardhan's death in 1914, the Saranjam was again resumed and regranted to his minor son Rajaramrao, There appears no uncertainty about the impartibility of the Saranjam and from the orders referred to above, it is clear that Government did not recognise the claim of the sharers. Even after the estate was regranted to Janardhan in 1922 the petitioner's father Mr. Raghunathrao Bajirao Potnis, applied to Government for separate payment of his share in the saranjam to him but Government refused his request (vide Government letter in Political Department No 442-A dated 6-2-1923). His attempt regarding

the recognition of his separate share in the saranjam having failed, he again moved Government on 9-9-1922 for a suitable provision from the revenues of the saranjam for the maintenance of his family and he was granted a maintence allowance of Rs. 30/- p.m. for life from the saranjam revenues. He received this maintenance allowance till his death in 1934. It will thus be seen that Government have all along since 1912 refused to recognise any sub-division of this saranjam. It is clear from all these orders that at no stage Government treated the Saranjam as partible and that the Government did not recognise the claims of the sharers; nor did Government acquiesce in the enjoyment of the Saranjam in separate shares. A saranjam must necessarily be governed by the terms subject to which it was granted and if any persons are not entitled under its terms to inherit, they cannot claim partition in the civil courts although they might be able to obtain suitable provisions made for their maintenance (see rules 7, 8 and 9). Therefore saranjamdars who are grantees subject to specified conditions, cannot by any length of family custom or usage, establish with binding force, which a Court could recognise, any variation of tenure inconsistent with the condition on which it was granted or is allowed by the Government to be continued.

Even in the case of the Gajendragad Saranjam a suit was filed by Daulatrao Malojirao and Bhujngrao, the two "potgidars" against the Government and the Saranjamdar, ~~and Government and the Saranjamdar,~~ and Government on the R.L.A.'s advice (opinion No. 1942-P, dated 29-10-1935) agreed to compromise the suit on

condition that the Saranjam should be impartible
de jure but each branch should be declared to be
de facto holder of the portion in his possession
and with the distinct undertanding that did not
amount to any admission on the part of Govern--
ment that the saranjam was partible. When the matter
was recently reopened and reconsidered the Advocate
General held inhis opinion No. 16, dated 14-3-1947,
that the suit and its withdrawal constitute the
gist of the matter and the orders issued by
Government represent a compromise duly arrived
at after due consideration and to go back on those orders
would constitute a breach of the faith with the
other parties to the compromise. It would thus be seen
that Government was compelled to adhere to those
orders issued in 1936 in view of the peculiar and
special circumstances of the particular case. It
is true that it is open to Government to relax rule 6
if justice equity and good conscience would in any
case demand it and as observed by Stone J. in Civil
Reference No. 2 of 1945 made by the Government of
Bombay in the case of Daulatrao Malojirao Vs. Province
of Bombay 49 B.L.R. 270 at p. 276 (relating to the
Gajendragad Saranjam) Caranjam Rules cannot exhaust
the general power or prevent Government from making a decision or determination referential to a particular.
saranjam without altering the rules with regard to all
of them. In the case of the Potnis saranjam Government as
long ago as 1912 resumed and regranted the saranjam
free of all charges to the senior branch. Government
have all along refused to recognise any sub-division
of the saranjam. This position has existed for over 35
years and to go back on those orders and create sp cial
charges on the saranjam for the different branches of the

family, or create separate de facto saranjams means taking an inconsistent position that Government hast taken so far. The Shendurni, Bagni and Gajendrgad Saranjams are peculiar by themselves and they cannot be quoted as authorities for recognition of the distinct shares in the Potnis saranjams. The best course, therefore, appears to be not to disturb the existing arrangements.

Id/- P. I.L.
6-5

Remembrancer of Legal Affairs.

U.R. to P. & S.D. ,No. 4439, dated the 7th May 1948.

PSM. 29-5
4C

Office of the R.L.A.

Conversion of Saranjam lands to Rayatwari tenure.

In his letter No. W.T.N.(F.S.)921 dated the 26th November 1947, the Collector did make a suggestion that certain saranjam lands should be converted into Rayatwari tenure and sold to meet the liabilities of the estate, but in his subsequent letter No. W.T&N.(N.S.) 721, dated the 26th/29th June 1948, the Collector has stated that there is now no necessity of converting the saranjam lands to Khalsa and to dispose them of to meet the liabilities (vide letter on pp. 85-86 ante). In these circumstances the question referred to R.L.A. does not survive and is merely academic. It appears therefore unnecessary for R.L.A. to express his opinion on the point.

Id/- P.M.L.
16-10

Remembrancer of Legal Affairs.

U.R. to P.S & S.D.,No. 9701, dated the 18th October 1948.

PSM. 29-5

Shenduri Saranjam
Rule 5.

Office of the R.L.A.

The method adopted by Government in Government Resolution, Political and Services Department, No. 7405/34 dated 7th May 1947 of creating a charge was intended mainly to conform to rule 6 of the Saranjam Rules by refusing to recognise the sub-division of the Saranjam without disturbing possession of the junior branch represented by Sardar Gangadhar Yadneshwer Dixit. Obviously the intention of Government in resorting to this method was to maintain status quo and if Sardar Gangadhar was liable to pay Rs. 1500/- annually to the Saranjamdar under the High Court decree in respect of the moiety of the Saranjam in his possession, it was not intended that he should be released from that liability. In fact rule 5 of the Saranjam Rules contemplates the release of the Saranjam property from encumbrances created in his favour. Consequently against the Saranjamdar himself and not from encumbrances created
that rule which might probably be relied upon by Sardar Gangadhar to defeat the claim of the Saranjamdar for Rs. 1500/- under the High Court decree may not have any application. However, to put the matter beyond any pale of doubt and to bar any litigation between the parties, it appears desirable that Government should modify the G.R. serving the claim of the Saranjamdar under the High Court Decree.

Id/- P.M.L.
22-10

Remembrancer of Legal Affairs.

U.R. to P. & S.D., No. 9935, dated the 23rd October 1948.

R.I.No. 16516
9-12-48.

Submitted.

Pl. see papers underlying R.L.A.'s opinion No. 9935 , dated 23-10-1948. In accordance with this opinion P. & S.D. has put up a draft G.R. amending G.R., P. & S.D. No. 7405/34, dated 7th May 1948. The R.L.A. is requested to advise whether the draft G.R. at p. 187 ante is in order.

2. In modification of para. 2 of G.R, P. & S. D. No. 7405/34, dated the 7th May 1948, Govt. has directed that the possession of the southern moiety of the Junior Branch, now represented by Sardar Gangadhar Yadneshwer Dixit, should be continued as hitherto in the family of the Sardar so long as the Saranjam is continued to the lineal male heirs of the first British Grantee. The draft G.R. carries out the intention and the papers may be seen and returned. The draft G.R. at p. 187 ante is in order.

Sd/- P.S.Nadkarni.
16-12

A.L.R.

Id/- R.T.K.
16-12

R.L.A.

Id/- P.M.L.
16/12

A to A.

U.R. to P.& S.D.,No. 1999 dated 17-12-1948.

PSM. 29-5
4C

Office of the R.L.A.

Claim of Sardar of Wai to the revenues of Erandel Pargana.

Treaty of 1820

The view taken by the Commissioner, C.D. is correct.

Admittedly over since the treaty of 1820 the Sardar is not getting more than Rs. 24,000/- which sum is based on the system of calculation in vogue previous to 1820; and after having acquiesced in this system of calculation for ever a century, it would hot be open to the Sardar to challenge it, much less to introduce another system calculated to benefit him. Any such claim would be clearly time-barred.

. The apart, even on merits the Sardar does not appear to have any good case. By the treaty of 1820 what was formerly held by the Sardar was continued. What was previously held will have to be ascertained from the records previous and subsequent to 1820. The relevant portion of the sanad of 1715 speaks of the grant of the Mokasa Mahal and not of the whole revenues of the villages; and it is presumed that there is nothing in the body of the sanad which militates against that position. That position is consistent with the revenues settled as payable to the Sardar before as well as after 1820. In the face of this unimpeachable evidence the alleged sanad of 1732, and extract of the Barnishi of the grant produced by the Sardar cannot be accepted as conferring on him any higher right to the full revenues of the villages.

Id/- P.M.L.
14-12

Remembrancer of Legal Affairs.

U.R. to P. & S.D., No. 11875, dated the 15th December 1948.